

NOVA SCOTIA COURT OF APPEAL

Citation: *PFI Interests, LLC v. Canco Manufacturing Holdings ULC*,
2022 NSCA 70

Date: 20221121

Docket: CA 511914

Registry: Halifax

Between:

PFI Interests, LLC

Appellant

v.

Canco Manufacturing Holdings ULC

Respondent

Judges: Farrar, Fichaud and Van den Eynden JJ.A.

Appeal Heard: November 21, 2022, in Halifax, Nova Scotia

Written Release November 21, 2022

Held: Appeal dismissed with costs, per reasons for judgment by the Court

Counsel: James D. MacNeil and Katie Short, for the appellant
Nathan Sutherland and George Franklin, for the respondent

By the Court (Orally):

[1] We are unanimously of the view the appeal should be dismissed with costs to the respondents in the amount of \$4,000, inclusive of disbursements.

[2] The appellant focuses on the distinction between a contractual and trust relationship without explaining how that would impact the interpretation of Clause 3 of the Voting Trust Agreement. We are not satisfied it makes a difference in these circumstances.

[3] We are substantially in agreement with the reasons of Justice Ann E. Smith. The only comment we make is with respect to two aspects of the decision (reported, 2021 NSSC 320).

[4] The first relates to ¶15, 71 and 106. In those paragraphs, the application judge is referring to Clause 5 of the Voting Trust Agreement and states:

[15] Section 5 provides that Canco owes no duty to account to PFI [...]

[...]

[71] [...] To the contrary, section 5 provides that Canco [...] “shall be under no duty to account to [PFI]”.

[...]

[106] [...] There is therefore nothing unjust about holding PFI to the terms of the agreement, which release Canco from any duty to account to PFI.

[5] Although nothing turns on it in this appeal, s. 5 of the Voting Trust Agreement does not release Canco from *any* duty to account. Section 5 specifically provides a duty to account where the Voting Trustee acts with “wilful misconduct or bad faith”. Therefore, there may be circumstances where the Voting Trustee may have a duty to account.

[6] Although the record indicates counsel and the judge were aware of the express exceptions set out in s. 5, they are not noted in the application judge’s written decision. Thus, to the extent the application judge suggests there is never a duty to account, we would respectfully disagree.

[7] Secondly, the application judge determined at ¶89 that the Voting Trustee had a duty to exercise its discretion to vote in the best interest of Cabot

Manufacturing ULC, the operating company. The appellant says the Voting Trustee was not so bound as the discretion to vote is not so restrictive. The respondent, without conceding, says if this is an error of law it is immaterial to the appeal.

[8] We agree this point of contention between the parties is immaterial to the appeal. Further, it is clear from the record, the judge's finding of such a duty was contextual to the matters before her.

Farrar J.A.

Fichaud J.A.

Van den Eynden